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COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Twenty-fourth session

SUMMARY RECORD OF THE 83rd MEETING

Held at the Palais Wilson, Geneva,
on Thursday, 30 November 2000, at 3 p.m.

Chairperson: Mrs. BONOAN-DANDAN

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GE.00-15992 (E)

The meeting was called to order at 3.25 p.m.

FOLLOW-UP TO THE CONSIDERATION OF REPORTS UNDER ARTICLES 16 AND 17 OF THE COVENANT (agenda item 4) (continued)

Initial report of Israel (E/1990/5/Add.39) (continued)

1. The CHAIRPERSON invited Mr. Hunt to read out the additional subparagraph that he wished to have inserted in the third paragraph of the letter to Israel concerning follow-up to its initial report (E/1990/5/Add.39), which had been discussed at the previous meeting.

2. Mr. HUNT said that he had drafted the following text in the light of consultations with other members of the Committee: "widespread restrictions imposed by the Israeli authorities on the movement of people and goods, including food, medical supplies and fuel".

3. The new subparagraph was adopted.

4. The letter to Israel as a whole, as amended, was adopted.

SUBMISSION OF REPORTS BY STATES PARTIES IN ACCORDANCE WITH ARTICLES 16 AND 17 OF THE COVENANT (agenda item 8)

5. The CHAIRPERSON reminded the Committee that it had not yet decided on a deadline for the submission of Morocco's third periodic report. Since ratifying the Covenant in 1979, Morocco had submitted only its initial report (E/1990/5/Add.13) and its second periodic report (E/1990/6/Add.20). When the Committee was satisfied with the quality of a report and with the State party's replies to the list of issues, it usually set a deadline of five years for the next report. However, she understood from informal consultations that a number of Committee members wished to shorten the period in the case of Morocco to three years.

6. Mr. PILLAY said that the delegation had made much of the emergence of a new human rights culture in Morocco. The Committee would be able to tell in three years' time whether the authorities' intentions were really serious.

7. Mr. RIEDEL expressed support for a shorter deadline. However, it should be borne in mind that the normal interval between periodic reports was five years. Given its existing workload, the Committee should exercise caution in calling for additional reports.

8. Mr. GRISSA said that the present backlog would not be cleared until the end of 2002 and an additional 30 to 40 reports would come in during that period. If Morocco was asked to submit a report within three years, the Committee would have to ensure that it was considered without delay.

9. The CHAIRPERSON said that the current schedule for consideration of reports ran until May 2002. That left a safe margin for the inclusion of Morocco's report.

10. Mr. TEXIER said that the normal deadline for submission of reports should be shortened only in special circumstances. Morocco's failure to submit more than two reports in 20 years might place it in that category but its performance was no worse than that of many other States parties. It looked as though the improvement in the human rights situation since the accession of King Mohammed VI was set to continue. He was therefore inclined to call for a five-year reporting period. The average interval between the submission of a report and its consideration by the Committee was currently two years, a gap that should not be allowed to widen. As the Economic and Social Council's continued approval of an extraordinary session of the Committee each summer could not be taken for granted, it was essential to provide for a full agenda at every session.

11. Mr. HUNT suggested reviewing the deadlines set for submission of reports during the past few sessions so as to take a consistent decision regarding Morocco.

12. Mr. TEXIER said that Israel had submitted its initial report in 1998 and had been asked to submit its second periodic report in 2001. Obviously, that was a special case owing to the crisis in the occupied territories. If a crisis occurred in the case of Morocco or any other State party, similar action could be taken.

13. Mr. TIKHONOV (Secretary of the Committee) said that in 1999 five-year deadlines for the submission of periodic reports had been set for Armenia, Denmark, Ireland and Tunisia. Two-year deadlines had been set for Argentina, Bulgaria and Cameroon.

14. Mr. AHMED said that Morocco needed time to act on its good intentions. It would be too soon to tell in three years' time whether substantial progress had been made.

15. Mr. ANTANOVICH said that the situation in Morocco was not unduly worrying. He was in favour of maintaining the five-year reporting period.

16. Mr. RATTRAY stressed the importance of establishing basic principles to justify a departure from the five-year rule. The reasons advanced in Morocco's case were not, in his view, sufficiently convincing. If events of a serious nature occurred, the date for submission could be brought forward.

17. Mr. HUNT queried the consistency of setting a two-year deadline for Argentina and Cameroon and a five-year deadline for Morocco.

18. Mr. PILLAY reminded the Committee that Morocco had made virtually no progress in implementing the Covenant since 1994 and had failed to act on its recommendations. Was it wise to take it for granted that a new human rights culture had materialized? Morocco should be made to understand that the Committee meant business. If it wished to demonstrate its good will, it could quite easily gather statistics in respect of key indicators within three years.

19. Mr. TEXIER said that Mr. Tikhonov's explanation only highlighted the inconsistency of the Committee's practices since it had been even more dissatisfied with the initial report of Cameroon; it was time to establish fixed criteria regarding the periodicity of reports.

Such criteria might relate to situations in which oral and written replies furnished by the delegation were insufficient, or serious situations, as in the case of Israel, which required the State party to report back to the Committee earlier than scheduled. Finally, he would caution the Committee against changing its criteria too frequently.

20. Mr. HUNT suggested that, once agreed, the criteria could be included in the Committee's annual report. He himself had identified four arising from the discussion thus far. They were based on the following: the situation in the State party being such as to warrant an earlier consideration of its next report; the poor quality of information received from the State party; the poor quality of the dialogue with the Committee; and tardy reporting.

21. Mr. GRISSA said that a State party might not have time to prepare a report within a shortened time-frame of three years. The idea behind the five-year time-frame was to give States parties sufficient time to remedy shortcomings noted by the Committee. If a report was to be submitted in 2003, it should normally be prepared in 2002, thus reducing the interval even further, to two years, which was inadequate. Such a requirement was unrealistic.

22. Mr. SADI said he was opposed to the five-year deadline because it was too long and countries needed to be held accountable. In addition to the criteria already identified, he would propose another one to be applied in cases where consideration of a State party's report had been suspended because of a change in regime, such as had been the case with the Federal Republic of Yugoslavia and Morocco. In such circumstances, five years was too long a delay in reviewing the progress of a country which had been given the benefit of the doubt with regard to its implementation of the Covenant. As for the argument that nothing of substance could be achieved in two years, he felt that, on the contrary, much could be achieved, including enactment of laws and the reshuffling of Government cabinets.

23. Mr. WIMER ZAMBRANO said that nothing could be gained from shortening the deadlines for submission of reports, given the Committee's existing backlog. Nor would States parties benefit from appearing before the Committee more frequently. The reporting periods should be shortened only in exceptional circumstances.

24. The CHAIRPERSON said that the discussion was, in fact, concerned with unusual circumstances which called for consistent criteria. So far, four objective criteria had been identified based on the quality of the report and written replies; the quality of the dialogue with the Committee; the current political situation in the State party, for example if it had just emerged from a crisis; and the timeliness of the report.

25. Mr. PILLAY agreed with the remarks made by Mr. Sadi and proposed a further criterion for the shortening of deadlines, namely non-implementation, within a reasonable period, of most of the recommendations made by the Committee in the previous concluding observations. Morocco should be given the opportunity to demonstrate its professed good will.

26. The CHAIRPERSON said that Morocco's second periodic report had been due in June 1995 and its third in June 2000. The Committee could, therefore, set a date for Morocco to reappear before it based on that objective information.

27. Mr. TEXIER observed that the Covenant itself was silent on the question of the frequency of reports but that it was the Committee, not the Economic and Social Council, which set the deadlines for the submission of reports. In the past, the Committee had examined reports in stages, every two years, rendering the process an extremely complex one. The system had been amended to provide for the submission of initial reports two years after ratification of the Covenant and subsequent reports at five-year intervals. Although he understood the concerns of Mr. Pillay and Mr. Sadi, it was unrealistic to shorten the deadlines at a time of ongoing reassessment of working methods among all human rights treaty bodies. The Committee should decide what outcome it desired from its suggestions and recommendations, for example, implementation of the Covenant or assistance to States parties in their relations among themselves and with the United Nations system. He considered five years to be a reasonable time-frame for implementation, except in unusual circumstances, and he pointed out that, if all States parties to the Covenant began submitting their reports on time, the Committee would be unable to handle the extra workload.

28. Mr. TIKHONOV (Secretary of the Committee), replying to Mr. Texier, said that it was only partly true that the Committee set the deadlines for reports. After the Committee had decided that it no longer wished to continue the practice of considering reports in stages, it had approached the Economic and Social Council with a proposal to amend the procedure, which had been approved under Council resolution 1988/4. Consequently, as of 1990, State parties had been required to report to the Committee two years after depositing their instrument of ratification in the first instance, and thereafter at five-year intervals. The relevant decision had thus been taken by the Economic and Social Council.

29. Mr. GRISSA said that Belgium, like Morocco, had been late in submitting its second periodic report, but had not been requested to reappear before the Committee ahead of schedule. Morocco's circumstances were unusual, as had been Jordan's, yet no such request had been made of Jordan either.

30. Mr. REIDEL said that the reporting cycle should be distinguished from the cycle of actual dialogue with the State party. If, for the valid reasons mentioned, the Committee wished once again to change its rules of procedure, it could do so without fear of opposition from the Economic and Social Council. The Committee had unofficially introduced changes in the past, including reduction of the five-year reporting period, that had gone unchallenged. Moreover, strict adherence to the five-year interval would only encourage tardy reporting. A strong case could be made for introducing exceptions to the five-year rule on the basis of the criteria identified, as long as such exceptions were applied consistently. In cases where the situation on the ground warranted rapid action by the Committee, a deadline of under three years could be envisaged.

31. The CHAIRPERSON said that the question of periodicity had been one of the key issues discussed at the recent meeting of chairpersons of treaty monitoring bodies, so the Committee's case was not an isolated one. The current discussion would serve to highlight the need for action on the subject.

32. Mr. SADI inquired whether the five-year rule, adopted by the Economic and Social Council on the Committee's recommendation, was a fixed period or simply a ceiling, which

would mean that periods of under five years could be imposed. The Committee's working methods were not an end in themselves but a means of ensuring its effectiveness. In order for the Committee to be effective, it needed to put pressure on States parties, to provide them with an incentive to act, notwithstanding the constraints relating to the backlog of work.

33. Mr. CEVILLE said that, like Mr. Sadi, he was interested to know whether the five-year period was a ceiling. Even if the formal deadline was set at five years, Morocco could be requested to reappear before the Committee ahead of schedule since its situation was more critical than that of Belgium. He endorsed Mr. Pillay's suggestion of a possible criterion relating to a State party's failure to implement the Committee's suggestions and recommendations. Nevertheless, the Committee should not be inflexible; he believed that it had, in the past, requested the provision of information before the due date of a State party's report, as a follow-up to the previous report. However, as Mr. Grissa had pointed out, some things could not be achieved in less than five years. There was, therefore, need for greater flexibility so as to obtain information relating to the State party's progress in implementing the Committee's suggestions and recommendations.

34. Mr. WIMER ZAMBRANO said the most crucial aspect of the matter was whether the proposal under consideration, namely reduction of time-frames, would improve the Committee's working methods. Would it permit the Committee to make exceptions, and under what conditions? He would be in favour of establishing criteria for determining the circumstances in which the early submission of a report might be required. However, improvement of the Committee's working methods should remain the priority.

35. Mr. TIKHONOV (Secretary of the Committee), replying to Mr. Sadi, said that rule 58 (2) of the Committee's rules of procedure could be interpreted to mean that States parties could submit their initial reports ahead of the two-year deadline.

36. As for periodic reports, it was for the Committee to decide whether to reduce the five-year interval. According to rule 63 (2), if a State party's report did not contain sufficient information, the Committee could request the State concerned to furnish additional information, indicating the manner as well as the time within which the said information was to be submitted.

37. The CHAIRPERSON said that was all the more reason for establishing fixed criteria with a view to improving the Committee's working methods.

38. Mr. MARCHÁN ROMERO agreed with the remarks made by Mr. Wimer Zambrano. General rules already existed and the Committee was now attempting to improve its working methods in order to deal with exceptional cases. Concerning the criteria already identified, it should be borne in mind that very few States parties complied with all of the Committee's suggestions and recommendations. Hence the need to exercise caution in establishing such criteria.

39. Mr. TEXIER said that the current discussion was a timely one, since it was clear that the rules on periodicity had not always been enforced strictly in the past. He was encouraged by emerging consensus as to the length of the reporting period and the criteria enumerated by Mr. Hunt. The Committee's rules of procedure clearly allowed it the flexibility to request

additional information from States parties outside the regular reporting period; that had in fact always been the Committee's practice. There was no doubt that the Committee's working methods would be improved by the inclusion of the proposed criteria in its annual report, together with a reference to the need to retain flexibility.

40. Mr. RIEDEL agreed that there seemed to be a consensus on the five criteria. They offered sufficient flexibility to vary reporting requirements when the circumstances warranted - subject to approval by the Economic and Social Council. To date, neither States parties nor the Economic and Social Council had objected when the Committee had departed from the five-year rule. The criteria took on special importance in the context of requests for additional information to supplement deficient reports. He considered that the Committee was entitled to continue asking for such information to be supplied within a relatively short period.

41. Mr. SADI said that the main objective of the current discussion was to make the Committee's work more effective; improving working methods only represented a means towards that end. The rules of procedure referred to by the secretary made it clear that the Committee was obliged to adhere to the five-year rule, unless it invoked rule 63 on which any new criteria must be based.

42. Mr. PILLAY said there was a clear consensus on the primacy of the five-year rule, and on the feasibility of using rule 63 (2) of the rules of procedure as the basis for adopting the five proposed criteria. The remaining issue was to decide whether the criteria applied to Morocco which, in his view, had passed none of the five tests.

43. The CHAIRPERSON took that point, but noted that, in its concluding observations on Morocco, the Committee had commended the State party for the candidness of its comments and its readiness to reply to questions.

44. Mr. PILLAY said that the paragraphs referred to by the Chairperson constituted no more than the usual courtesies. It was clear from the bulk of the concluding observations, that the Committee had suspended its judgement, in deference to the new political regime in Morocco and the delegation's invocation of a new era for human rights in Morocco. The new level of political will said to exist in Morocco should be put to the test by a Committee request for a report to be submitted in three years.

45. The CHAIRPERSON noted that the Committee's observations concerning Cameroon had been much more critical than in the case of Morocco.

46. Mr. GRISSA said he did not believe that the five criteria should be applied to Morocco. The situation was somewhat similar to that in Yugoslavia, in that a new Government had recently come to power, and more time would be required for a properly detailed report to be produced. Moreover, while Morocco's report had been due in 1995, several countries due to report in 1992, including France and Japan, had not done so.

47. Mr. CEVILLE said there was no doubt as to the primacy of the five-year rule. However, in cases where the Committee requested an earlier report under rule 63, its hands were tied by

rule 62 which provided that the State party had to agree to the scheduling of such a report. In the case of Morocco, he considered that the Committee was legally entitled to ask for a report by 2004 at the earliest.

48. Mr. HUNT said that the key issue was how to calculate the start of the five-year period. Rule 58 (2) provided for regular reporting cycles calculated from the date of ratification. On that basis, Morocco had been due to submit a report in June 2000, but that deadline had passed. In deciding on the deadline for Morocco's next report, the Committee was bound by the fact that the five-year rule was not negotiable, but the rules allowed it the flexibility to determine the date on which the five-year period should begin.

49. The CHAIRPERSON said the Committee was confronted with two issues: what procedures to use in calculating the next reporting date, and how to determine the starting point of the reporting period.

50. Mr. RIEDEL said the Committee was faced with four options: to apply the five-year rule strictly, starting from the date of ratification; to introduce flexibility deadlines in accordance with the criteria under discussion; to request authorization from the Economic and Social Council to depart from the five-year rule in particular circumstances; or finally, to continue the existing practice of following the reporting rules consistently and altering them as the need arose, provided no objections were raised by the Economic and Social Council or by States parties.

51. The CHAIRPERSON said that, on the basis of the five criteria, and in deference to the "new dawn" evoked by its delegation, Morocco should be asked to submit its next report in five years' time.

52. Mr. RIEDEL said that, if Morocco was being asked to report in 2005, there was no need to apply the criteria. He proposed that Morocco be requested to submit a report in three years.

53. The CHAIRPERSON said she, too, favoured a three-year deadline. However, the Committee was adopting criteria for application on an objective basis to all States, and shortening the reporting period meant disregarding the positive aspects mentioned in the Committee's concluding observations on Morocco.

54. Mr. PILLAY said that, on the whole, the Committee's concluding observations on Morocco did not reflect a satisfactory situation. He still considered that most, if not all, of the proposed criteria applied to Morocco, and that it should therefore be requested to report within three years. Within the overall reporting context, Morocco had achieved very little in response to the Committee's suggestions and recommendations.

55. The CHAIRPERSON suggested that, as a compromise solution, Morocco should be requested to submit its next report in four years, by 30 June 2004.

56. It was so decided.

The meeting rose at 5 p.m.